

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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ORACLE FINANCIAL GROUP LLC, : DECLARATION
:
Plaintiff, : Case No.:1:17-cv-00956
:
-against- :
:
LEMBERG LAW LLC, :
:
Defendant. :
:-----x

I, Kevin P. Wicka, Esq., make this Declaration under penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am an attorney at law duly licensed to practice law in the State of New York and this Court and am a partner with The Tarantino Law Firm, LLP, attorneys for Plaintiff in the above-captioned action. As such, I am fully familiar with the facts and circumstances of this matter as herein set forth.
2. This motion is filed with the consent of defense counsel.
3. This is an action brought by Plaintiff pursuant to Lanham, 15 U.S.C. §1051 *et seq.*; trade libel/commercial disparagement and defamation law under the laws of the State of New York.
4. Defendant filed a motion to dismiss on November 27, 2017 (Docket #9).
5. On December 5, 2017, the Honorable Lawrence J. Vilardo, United States District Judge, referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge (Docket #10).

6. On December 6, 2017, this Court issued a Scheduling Order with respect to defendant's' motion to dismiss (Docket #11). That Order required that any responses to defendant's' motion are due by December 29, 2017 and any replies are due by January 5, 2018.

7. The parties have been engaged in negotiations to resolve this matter and have reached a resolution which is being memorialized in a settlement agreement. It was believed that the matter could be resolved within the time period set by the Court before responses were due in this matter. However, due to the fact that there are additional counsel that are out-of-state which are involved in the preparation of that Agreement, the parties were unable to complete and execute that Agreement prior to the deadline to file the response papers in this matter. The onset of the holidays further complicated and delayed the finalizing of that Agreement.

8. Accordingly, the parties are requesting that the Scheduling Order be modified to allow any responses to the motion by January 15, 2018, and that any replies be due by January 22, 2018. It is believed that the parties will not be filing responses or replies, as there is an agreement in place to resolve this matter. However, in an abundance of caution, until that Settlement Agreement is executed, we are seeking the requested modification to the Scheduling Order.

WHEREFORE, declarant prays for the relief herein requested, together with such other and further relief as the Court deems just and proper.

Dated: December 29, 2017

/s/ Kevin P. Wicka, Esq.

Kevin P. Wicka, Esq.

Kevin P. Wicka, Esq.

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